

**COPY**

IN THE FAMILY COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

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STATE OF HAWAII

F.C.C.R. NO. 93-0001

**VS.**

REGINA SMITH,

Defendant.

STATE OF HAWAII

F.C.C.R. NO. 93-0001

**VS.**

FRANCIS NAKAMURA, JR.,

Defendant.

T R A N S C R I P T

of the proceedings had in the above-entitled matter on the 27th day of September, 1993, before the HONORABLE LINDA K. C. LUKE, Judge, presiding.

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Exhibit "00"

1 APPEARANCES:

2 DAVID MINKIN Attorney for the State of  
3 Deputy Prosecuting Attorney Hawaii

4 JACK TONAKI Attorney for Regina Smith  
5 Deputy Public Defender

6 GEORGE PARKER, III Attorney for Francis  
7 Nakamura, Jr.

8  
9  
10 REPORTED BY:

11 CYNTHIA TANDO  
12 Official Court Reporter  
13 Circuit Court of the  
14 First Circuit  
15 State of Hawaii  
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1 MONDAY, SEPTEMBER 27, 1993 10:47 a.m.

2 (The following proceedings were held in open  
3 court out of the presence of the jury:)

4 THE CLERK: Calling Family Court  
5 Criminal Number 93-0001, State of Hawaii versus Regina  
6 Smith and Francis Nakamura, Jr. for further jury  
7 trial.

8 THE COURT: Good morning, counsel.  
9 Your appearances?

10 MR. MINKIN: Good morning, Your Honor.  
11 David Minkin, Deputy Prosecuting Attorney, on behalf  
12 of the State of Hawaii substituting for Jeff Rosell.  
13 Also present with me is June Morimatsu, paralegal  
14 assigned to assist on this case.

15 THE COURT: Thank you.

16 MR. PARKER: Good morning, Your Honor.  
17 George Parker making an appearance before this  
18 Honorable Court for Francis Nakamura, who is also  
19 present.

20 MR. TONAKI: Good morning, Your Honor.  
21 Jack Tonaki on behalf of Regina Smith. I'm standing  
22 in for Timothy Ho.

23 THE COURT: Okay. Thank you. Please  
24 be seated.

25 Counsel, I do have just a few housekeeping

1 items. I would like the record to reflect, thanks to  
2 Miss Kubo, that there are clean sets of the  
3 instructions sequenced in the order that the Court  
4 expects to read them to the jury. And I count 49  
5 pages, although I think it should be 50 because I had  
6 combined two instructions on one page.

7 Secondly, with respect to the verdict forms,  
8 Mr. Minkin, have you had an opportunity to review  
9 these?

10 MR. MINKIN: Yes, Your Honor, I've  
11 reviewed the verdict forms as to both defendants.  
12 They appear to be in order and the State has no  
13 objection to the verdict forms.

14 THE COURT: And the jury communication  
15 form?

16 MR. MINKIN: The State has also  
17 reviewed that and no objection in that it appears in  
18 order.

19 THE COURT: Thank you.

20 Mr. Parker?

21 MR. PARKER: Yes, Your Honor, I've  
22 reviewed the jury verdict forms as well as the jury  
23 communication form with regard to Francis Nakamura. I  
24 have no objections.

25 THE COURT: Thank you.

1 Mr. Tonaki?

2 MR. TONAKI: Your Honor, no objection  
3 to the verdict forms and communication forms.

4 THE COURT: Thank you.

5 Secondly, with respect to the Court's  
6 suggestion that a copy of the indictment be furnished  
7 to the jury, I have reconsidered since I have heard  
8 objections in our bench conference from Mr. Parker and  
9 Mr. Tonaki, although I believe Mr. Minkin was  
10 agreeable to doing so. I will rely upon the jury  
11 instructions to guide the jury as to the substance of  
12 the counts.

13 Now, Mr. Parker, is that correct, you had  
14 objected?

15 MR. PARKER: I had objected, Judge.  
16 Thank you very much.

17 THE COURT: And, Mr. Tonaki?

18 MR. TONAKI: Yes, we had objected also,  
19 Your Honor.

20 THE COURT: Okay. Thirdly, with  
21 respect to the, I guess, logistics, if counsel does  
22 not object, I'd like to put it on record at this point  
23 that, I take it, there will be an agreement by counsel  
24 that the bailiff may take the jury to lunch without  
25 the necessity of formally reconvening in open court;

1 secondly, that the clerk will notify you once the jury  
2 panel is taken to lunch; thirdly, that if the jury  
3 does not reach a verdict by the close of business,  
4 which generally will be 4 o'clock, the bailiff may  
5 excuse them with the admonishment not to discuss the  
6 case and to have them return to the jury room to  
7 resume their deliberations on the case at 8:30 the  
8 next working day. Does counsel agree to this? Mr.  
9 Minkin?

10 MR. MINKIN: Your Honor, I have no  
11 objection. I would also recommend, I don't think it's  
12 necessary to notify us if they go to lunch between  
13 11:30 and noon, and come back between 1:00 and 1:30.

14 THE COURT: No, I do need to notify you  
15 because our luncheon times may vary and I expect that  
16 counsel will be within instant contact by telephone  
17 and at least a 15-minute radius of any physical bench  
18 conferences we need to have or in person. Thank you.

19 Mr. Parker?

20 MR. PARKER: No objection, Judge. The  
21 only thing I would like to know is, if -- when you  
22 call to let us know they're going to lunch, will you  
23 please indicate to us where they are going? I have  
24 found in the past, I like to avoid where my jurors are  
25 going because that can only hurt me. Whether they

1 think I'm trying to curry favor or something else, for  
2 me, I like to know where they are going so I don't go  
3 there. Otherwise, no objection.

4 THE COURT: Okay. Thank you.

5 Mr. Tonaki?

6 MR. TONAKI: No objection.

7 THE COURT: In addition, I take it, Mr.  
8 Parker, does your client waive his presence at any  
9 jury communication conferences?

10 MR. PARKER: Yes, Judge.

11 THE COURT: And how about Mr. Tonaki?

12 MR. TONAKI: Yes, Your Honor.

13 THE COURT: Okay. Mr. Nakamura, is  
14 that correct?

15 MR. PARKER: If I may have a moment,  
16 Judge?

17 THE COURT: Sure.

18 (Counsel and client conferring.)

19 DEFENDANT NAKAMURA: Yes.

20 THE COURT: Okay. And, Mr. Tonaki, you  
21 had a chance to confer?

22 MR. TONAKI: I've had a chance to  
23 confer with Ms. Smith, Your Honor, and she is also  
24 agreeable to that.

25 THE COURT: Okay.

1 Now, Ms. Smith, you know that, for the  
2 record, your attorney has the flu and Mr. Tonaki is  
3 filling in. That's the best arrangement we have  
4 today. It is not my intent to advise the jury as to  
5 the reason for Mr. Ho's absence as it was not my  
6 intent nor did I so inform the jury as to the reason  
7 for Mr. Rosell's absence.

8 So, Ms. Smith, do you have any objection to  
9 that?

10 DEFENDANT SMITH: No, I don't.

11 THE COURT: Okay. Please be seated.

12 In addition, counsel will be notified by  
13 telephone when the jury is released for the evening.  
14 Please leave your telephone contact numbers with the  
15 clerk of court. And let this Court know if you have  
16 an emergency that will necessitate your absence.

17 At this time I'd like to have the jury in so  
18 we can get on with the jury instructions.

19 Anything further? If not, thank you.

20 (The following proceedings were held in open  
21 court in the presence of the jury:)

22 THE COURT: Please be seated. Please  
23 recall the case.

24 THE CLERK: Calling Family Court  
25 Criminal Number 93-0001, State of Hawaii versus Regina



1 Smith and Francis Nakamura, Jr. for further jury  
2 trial.

3 THE COURT: Thank you.

4 The record will indicate the presence of the  
5 jury.

6 Thank you for your patience, noting that  
7 each of you have rushed to the courtroom.

8 Also, I will note that we have two  
9 substitutions; that is Mr. Minkin on behalf of Mr.  
10 Rosell for the State of Hawaii, and Mr. Jack Tonaki on  
11 behalf of Mr. Ho who represents Ms. Smith.

12 So formally, for the record, I would like  
13 their appearances starting with the prosecution.

14 MR. MINKIN: Thank you, Your Honor.  
15 Good morning. David Minkin, Deputy Prosecuting  
16 Attorney, on behalf of the State of Hawaii. Also  
17 present with me is June Morimatsu, paralegal assigned  
18 to assist on this case.

19 MR. PARKER: Good morning, Your Honor,  
20 ladies and gentlemen of the jury. George Parker  
21 making an appearance before this Honorable Court.  
22 Francis Nakamura is also present.

23 MR. TONAKI: Good morning, Your Honor.  
24 Jack Tonaki on behalf of Regina Smith. Ms. Smith is  
25 present.

1 THE COURT: Thank you.

2 We talked about entering the final phase of  
3 the trial process. You indeed have been very diligent  
4 in meeting your duties. It is now the time for the  
5 Court, as the judge of the law in the case, to give  
6 you the specific legal instructions that will guide  
7 you during your very important deliberations.

8 Remember four things, three of which will be  
9 given to you in the jury deliberation room; all of the  
10 official court exhibits.

11 And, for the record, I'd like to have Ms.  
12 Kubo recite for counsel the exhibits that will go in  
13 the packet.

14 Ms. Kubo, do you have those?

15 THE CLERK: Be Exhibits 12, 20, 23, 26,  
16 30, 31, 32 and 33, and those are State's. And defense  
17 S-3, which is for Ms. Smith, and S-4.

18 THE COURT: Thank you.

19 Mr. Minkin, is that consistent with the  
20 State's understanding?

21 MR. MINKIN: Yes, Your Honor.

22 THE COURT: Okay. And Mr. Parker?

23 MR. PARKER: Yes, Judge.

24 THE COURT: And Mr. Tonaki?

25 MR. TONAKI: Yes, Your Honor.

1 THE COURT: Thank you.

2 Number two, you will receive a clean set of  
3 the jury instructions. And number three, you will  
4 also receive a copy of what we call verdict forms.  
5 And the instructions are obviously self-explanatory,  
6 so please bear that in mind. The fourth thing that  
7 you will take into the jury deliberation room will be  
8 your recollection, your independent and collective  
9 recollection of what has been testified to by the  
10 witnesses in the case or any of the evidence that was  
11 proffered to you that is in evidence. Remember that  
12 the Court cannot furnish you with a transcript of  
13 instant replay, so it's crucial that you remember  
14 this.

15 At this time it is my duty to instruct you.  
16 There are 50 pages of instructions. I'd ask that you  
17 pay very close attention to each of these instructions  
18 as they will be your guide throughout your  
19 deliberation.

20 The Court will now instruct you in the law  
21 which you must follow in arriving at your verdict.

22 You are the exclusive judges of the facts of  
23 this case. However, you must follow these  
24 instructions even though you may disagree.

25 You must consider all of the instructions

1 together and consider each instruction in light of all  
2 the others. Do not single out or give greater  
3 emphasis to any word, phrase, sentence or instruction  
4 and ignore the others even if it is repeated. The  
5 order in which the instructions are given is not  
6 important.

7 You must consider only the evidence which  
8 has been presented to you in this case in light of  
9 your own observations, life experiences and common  
10 sense.

11 The indictment is a mere formal accusation  
12 and it is not evidence of either defendants' guilt.  
13 You must not be influenced at all because each  
14 defendant has been charged with offenses.

15 Trial procedures are governed by rules.  
16 When an attorney believes that the rules require it,  
17 it is the attorney's duty to raise an objection. It  
18 is the duty of the trial judge to rule on such  
19 objections. Do not consider for any purpose the  
20 nature or number of objections made during the trial  
21 by any attorney.

22 Anything said by the attorneys is not  
23 evidence. You should consider what they have said to  
24 you, but you are not bound by what they remember or  
25 how they see the evidence. You must also disregard

1 anything I said unless it was an instruction to you.

2 If I have in any way suggested or expressed  
3 to you that I favor one side or the other, or how I  
4 would resolve any issue in this case, I instruct you  
5 to disregard it.

6 You must not be influenced by pity for  
7 either defendant, or by passion or prejudice against  
8 either defendant. Both the prosecution and each  
9 defendant have a right to demand, and they do demand  
10 and expect, that you will be -- excuse me, that you  
11 will conscientiously and dispassionately consider and  
12 weigh all the evidence and follow these instructions  
13 and that you will reach a just verdict.

14 You must presume each defendant is innocent  
15 of the charges. This presumption remains with each  
16 defendant throughout the trial of the case unless and  
17 until the prosecution proves each defendant guilty  
18 beyond a reasonable doubt.

19 The presumption of innocence is not a mere  
20 slogan but an essential part of the law that you must  
21 follow. It places upon the prosecution the duty of  
22 proving every material element of the offenses charged  
23 against each defendant beyond a reasonable doubt.

24 You must not find each defendant guilty upon  
25 mere suspicion or upon evidence which only shows that

1 each defendant is probably guilty. What the law  
2 requires is not suspicion, not probabilities, but  
3 proof of each defendant's guilt beyond a reasonable  
4 doubt.

5 What is reasonable doubt -- or what is a  
6 reasonable doubt?

7 It is a doubt in your mind about each  
8 defendant's guilt which arises from the evidence  
9 presented or from the lack of evidence and which is  
10 based upon reason and common sense.

11 Each of you must decide individually whether  
12 there is or is not such a doubt in your mind after  
13 careful and impartial consideration of the evidence.

14 Be mindful, however, that a doubt which has  
15 no basis in the evidence, or the lack of evidence, or  
16 a doubt which is based upon imagination, suspicion, or  
17 a doubt -- excuse me, or mere speculation or guesswork  
18 is not reasonable doubt.

19 What is proof beyond a reasonable doubt?

20 If, after consideration of the evidence and  
21 the law, you have a reasonable doubt of each  
22 defendant's guilt, then the prosecution has not proved  
23 each defendant's guilt beyond a reasonable doubt and  
24 it is your duty to find each defendant not guilty.

25 If, after consideration of the evidence and

1 the law, you do not have a reasonable doubt of each  
2 defendant's guilt, then the prosecution has proved  
3 each defendant's guilt beyond a reasonable doubt and  
4 it is your duty to find each defendant guilty.

5 You must disregard entirely any matter which  
6 the Court has ordered stricken.

7 You must accept as conclusively proved any  
8 fact to which the parties made -- or, excuse me, have  
9 stipulated.

10 There are two types of evidence -- direct  
11 evidence, such as the testimony of an eyewitness, and  
12 circumstantial evidence, which permits a reasonable  
13 inference of the existence of another fact.

14 The law makes no distinction between direct  
15 and circumstantial evidence. Facts may be proved by,  
16 and the jury may consider and rely on either or both  
17 direct and circumstantial evidence.

18 While you must consider all of the evidence  
19 in determining the facts in this case, this does not  
20 mean that you must give every bit of evidence the same  
21 weight. You are the sole judges of the effect and  
22 value of the evidence.

23 You, as jurors, are the sole judges of the  
24 credibility of all witnesses and the weight their  
25 testimony deserves. It is your exclusive right to

1 determine whether and to what extent a witness should  
2 be believed and to give weight to the testimony  
3 accordingly. In evaluating a witness, you may  
4 consider the witness' appearance and demeanor; manner  
5 of testifying; intelligence; apparent candor or  
6 frankness, or lack thereof; interest, if any, in the  
7 result of this case; any relation to any party;  
8 temper, feeling or bias; and means and opportunity of  
9 acquiring information. You may also consider the  
10 probability or improbability of the witness'  
11 testimony; whether the witness is supported or  
12 contradicted by other evidence; whether the witness  
13 has made contradictory statements during the trial or  
14 at other times; and all other circumstances  
15 surrounding the witness and bearing upon the witness'  
16 credibility.

17 Inconsistencies or discrepancies in the  
18 testimony of a witness, or between the testimony of  
19 different witnesses, may or may not cause the jury to  
20 discredit such testimony. In weighing the effect of  
21 inconsistencies or discrepancies, consider whether  
22 they concern matters of importance or only matters of  
23 unimportant detail, and whether they result from  
24 innocent error or from willful lying.

25 If you find that a witness has intentionally



1       lied or overstated or tried to hide any important  
2       fact, then you may reject all or any part of that  
3       witness' testimony.

4               You are not bound to decide a fact one way  
5       or the other just because more witnesses testify on  
6       one side than the other. It is testimony that has a  
7       convincing force upon you that counts, and the  
8       testimony of even a single witness, if believed, can  
9       be sufficient to prove a fact.

10              The prosecution is not required to call as  
11       witnesses all persons who may have been present at any  
12       of the events disclosed by the evidence or who may  
13       appear to have some knowledge of these events, or to  
14       produce all objects or documents mentioned or  
15       suggested by the evidence.

16              Each defendant has no duty or obligation to  
17       call any witnesses or produce any evidence.

18              Each defendant in this case has testified.  
19       When each defendant testifies, his or her credibility  
20       is to be tested in the same manner as any other  
21       witness.

22              Several times during the trial certain  
23       evidence was allowed into this trial only for a  
24       particular and limited purpose. When you consider  
25       that evidence, you must limit your consideration to

1 that purpose only.

2 During the trial you heard the testimony of  
3 one or more witnesses who were described as experts.

4 Training and experience may make a person an  
5 expert in a particular field. The law -- excuse me,  
6 the law allows that person to state an opinion about  
7 matters in that field. Merely because such a witness  
8 has expressed an opinion does not mean, however, that  
9 you must accept this opinion. It is up to you to  
10 decide whether to accept this testimony and how much  
11 weight to give it. You must also decide whether the  
12 witness' opinions were based on sound reasons,  
13 judgment and information.

14 Counts 6, 7, 8, 9, 11, 18, 19, 20 and 21 in  
15 this case have been charged against Defendant Francis  
16 Nakamura, Jr.

17 Counts 1, 2, 3, 4, 5, 13, 14, 15, 16 and 17  
18 in this case have been charged against Defendant  
19 Regina Smith.

20 You must give separate consideration to the  
21 evidence that applies to each individual defendant.  
22 You must consider separately each count charged  
23 against each individual defendant.

24 Each defendant is entitled to have his or  
25 her case decided solely on the evidence that applies

1 to him or her. Some of the evidence in this case was  
2 limited to one of the defendants and cannot be  
3 considered in the cases of the other. You must limit  
4 your consideration of that evidence to the defendant  
5 as to whom the evidence was admitted.

6 Our State law defines, quote, knowingly,  
7 unquote, as follows:

8 A person acts knowingly with respect to his  
9 or her conduct when he or she is aware that his or her  
10 conduct is of that nature.

11 A person acts knowingly with respect to  
12 attendant circumstances when he or she is aware that  
13 such circumstances exist.

14 A person acts knowingly with respect to a  
15 result of his or her conduct when he or she is aware  
16 that it is practically certain that his or her conduct  
17 will cause such a result.

18 The state of mind which a person commits an  
19 act such as, quote, knowingly, unquote, may be proved  
20 by circumstantial evidence. While an eyewitness can  
21 give direct evidence of what a person did or didn't  
22 do, there can be no eyewitness to a person's state of  
23 mind. But what a person does or fails to do may or  
24 may not indicate the state of mind with which he or  
25 she does or refrains from doing an act.

1           In Count 6, Defendant Francis Nakamura, Jr.  
2       is charged with the offense of Sexual Assault in the  
3       First Degree.

4           A person commits the offense of Sexual  
5       Assault in the First Degree if he knowingly subjects  
6       to sexual penetration another person who is less than  
7       14 years old.

8           There are three material elements to this  
9       offense, each of which must be proven by the  
10      prosecution beyond a reasonable doubt. The three  
11      elements are:

12           One, that Francis Nakamura, Jr. subjected  
13      Alisha Perry to sexual penetration by inserting his  
14      penis into her vagina;

15           Two, that Francis Nakamura, Jr. did so  
16      knowingly; and

17           Three, at the time of the incident, Alisha  
18      Perry was less than 14 years old.

19           In Count 7, Defendant Francis Nakamura, Jr.  
20      is charged with the offense of Sexual Assault in the  
21      First Degree.

22           A person commits the offense of Sexual  
23      Assault in the First Degree if he knowingly subjects  
24      to sexual penetration another person who is less than  
25      14 years old.

1           There are three material elements to this  
2 offense, each of which must be proven by the  
3 prosecution beyond a reasonable doubt.

4           The three elements are:

5           One, that Francis Nakamura, Jr. subjected  
6 Alisha Perry to sexual penetration by inserting his  
7 penis into her mouth;

8           Two, that Francis Nakamura, Jr. did so  
9 knowingly; and

10          Three, at the time of the incident, Alisha  
11 Perry was less than 14 years old.

12          In Count 8, Defendant Francis Nakamura, Jr.  
13 is charged with the offense of Sexual Assault in the  
14 First Degree.

15          A person commits the offense of Sexual  
16 Assault in the First Degree if he knowingly subjects  
17 to sexual penetration another person who is less than  
18 14 years old.

19          There are three material elements to this  
20 offense, each of which must be proven by the  
21 prosecution beyond a reasonable doubt.

22          The three elements are:

23          One, that Francis Nakamura, Jr. subjected  
24 Alisha Perry to sexual penetration by inserting his  
25 finger into her vagina;

1 Two, that Francis Nakamura, Jr. did so  
2 knowingly; and

3 Three, at the time of the incident, Alisha  
4 Perry was less than 14 years old.

5 In Count 9, Defendant Francis Nakamura, Jr.  
6 is charged with the offense of Sexual Assault in the  
7 First Degree.

8 A person commits the offense of Sexual  
9 Assault in the First Degree if he knowingly subjects  
10 to sexual penetration another person who is less than  
11 14 years old.

12 There are three material elements to this  
13 offense, each of which must be proven by the  
14 prosecution beyond a reasonable doubt.

15 The three elements are:

16 One, that Francis Nakamura, Jr. subjected  
17 Alisha Perry to sexual penetration by inserting his  
18 toe into her vagina;

19 Two, that Francis Nakamura, Jr. did so  
20 knowingly; and

21 Three, at the time of the incident, Alisha  
22 Perry was less than 14 years old.

23 In Count 11, Francis Nakamura, Jr. is  
24 charged with the offense of Sexual Assault in the  
25 First Degree -- excuse me, strike that.

1           In Count 11, Francis Nakamura, Jr. is  
2 charged with the offense of Sexual Assault in the  
3 Third Degree.

4           A person commits the offense of Sexual  
5 Assault in the Third Degree if he knowingly has sexual  
6 contact with another person who is less than 14 years  
7 old and not his spouse.

8           There are four material elements to this  
9 offense, each of which must be proven by the  
10 prosecution beyond a reasonable doubt.

11           The four elements are:

12           One, that Francis Nakamura, Jr. had sexual  
13 contact with Alisha Perry by placing his hand on her  
14 breast;

15           Two, that Francis Nakamura did so knowingly;

16           Three, at the time of the incident, Alisha  
17 Perry was less than 14 years old; and

18           Four, at the time of the incident, Alisha  
19 Perry was not married to Francis Nakamura.

20           In Count 18, Defendant Francis Nakamura, Jr.  
21 is charged with the offense of Sexual Assault in the  
22 First Degree.

23           A person commits the offense of Sexual  
24 Assault in the First Degree if he knowingly subjects  
25 to sexual penetration another person who is less than

1 14 years old.

2 There are three material elements to this  
3 offense, each of which must be proven by the  
4 prosecution beyond a reasonable doubt.

5 The three elements are:

6 One, that Francis Nakamura, Jr. subjected  
7 Jana Perry to sexual penetration by inserting his  
8 penis into her vagina;

9 Two, that Francis Nakamura, Jr. did so  
10 knowingly; and

11 Three, at the time of the incident, Jana  
12 Perry was less than 14 years old.

13 In Count 19, Defendant Francis Nakamura, Jr.  
14 is charged with the offense of Sexual Assault in the  
15 First Degree.

16 A person commits the offense of Sexual  
17 Assault in the First Degree if he knowingly subjects  
18 to sexual penetration another person who is less than  
19 14 years old.

20 There are three material elements to this  
21 offense, each of which must be proven by the  
22 prosecution beyond a reasonable doubt.

23 The three elements are:

24 One, that Francis Nakamura, Jr. subjected  
25 Jana Perry to sexual penetration by inserting his



1 penis into her mouth;

2 Two, that Francis Nakamura, Jr. did so  
3 knowingly; and

4 Three, at the time of the incident, Jana  
5 Perry was less than 14 years old.

6 In Count 20, Defendant Francis Nakamura, Jr.  
7 is charged with the offense of Sexual Assault in the  
8 First Degree.

9 A person commits the offense of Sexual  
10 Assault in the First Degree if he knowingly subjects  
11 to sexual penetration another person who is less than  
12 14 years old.

13 There are three material elements to this  
14 offense, each of which must be proven by the  
15 prosecution beyond a reasonable doubt.

16 The three elements are:

17 One, that Francis Nakamura, Jr. subjected  
18 Jana Perry to sexual penetration by inserting his  
19 finger into her vagina;

20 Two, that Francis Nakamura, Jr. did so  
21 knowingly; and

22 Three, at the time of the incident, Jana  
23 Perry was less than 14 years old.

24 In Count 21, Defendant Francis Nakamura, Jr.  
25 is charged with the offense of Sexual Assault in the

1 First Degree.

2 A person commits the offense of Sexual  
3 Assault in the First Degree if he knowingly subjects  
4 to sexual penetration another person who is less than  
5 14 years old.

6 There are three material elements to this  
7 offense, each of which must be proven by the  
8 prosecution beyond a reasonable doubt.

9 The three elements are:

10 One, that Francis Nakamura, Jr. subjected  
11 Jana Perry to sexual penetration by inserting his toe  
12 into her vagina;

13 Two, that Francis Nakamura, Jr. did so  
14 knowingly; and

15 Three, at the time of the incident, Jana  
16 Perry was less than 14 years old.

17 In Count 1, Defendant Regina Smith is  
18 charged with the offense of Sexual Assault in the  
19 First Degree.

20 A person commits the offense of Sexual  
21 Assault in the First Degree if she knowingly subjects  
22 to sexual penetration another person who is less than  
23 14 years old.

24 There are three material elements to this  
25 offense, each of which must be proven by the

1 prosecution beyond a reasonable doubt.

2 The three elements are:

3 One, that Regina Smith subjected Alisha  
4 Perry to sexual penetration by placing Regina Smith's  
5 mouth on Alisha Perry's vagina;

6 Two, that Regina Smith did so knowingly; and

7 Three, at the time of the incident, Alisha  
8 Perry was less than 14 years old.

9 In Count 2, Defendant Regina Smith is  
10 charged with the offense of Sexual Assault in the  
11 First Degree.

12 A person commits the offense of Sexual  
13 Assault in the First Degree if she knowingly subjects  
14 to sexual penetration another person who is less than  
15 14 years old.

16 There are three material elements to this  
17 offense, each of which must be proven by the  
18 prosecution beyond a reasonable doubt.

19 The three elements material -- excuse me,  
20 the three elements are:

21 One, that Regina Smith subjected Alisha  
22 Perry to sexual penetration by placing Alisha Perry's  
23 mouth on Regina Smith's vagina;

24 Two, that Regina Smith did so knowingly; and

25 Three, at the time of the incident, Alisha

1 Perry was less than 14 years old.

2 In Count 3, Defendant Regina Smith is  
3 charged with the offense of Sexual Assault in the  
4 First Degree.

5 A person commits the offense of Sexual  
6 Assault in the First Degree if she knowingly subjects  
7 to sexual penetration another person who is less than  
8 14 years old.

9 There are three material elements to this  
10 offense, each of which must be proven by the  
11 prosecution beyond a reasonable doubt.

12 The three elements are:

13 One, that Regina Smith subjected Alisha  
14 Perry to sexual penetration by placing Regina Smith's  
15 finger in Alisha Perry's vagina;

16 Two, that Regina Smith did so knowingly; and

17 Three, at the time of the incident, Alisha  
18 Perry was less than 14 years old.

19 In Count 4, Regina Smith is charged with the  
20 offense of Sexual Assault in the Third Degree.

21 A person commits the offense of Sexual  
22 Assault in the Third Degree if she knowingly has  
23 sexual contact with another person who is less than 14  
24 years old and not her spouse.

25 There are four material elements to this

1 offense, each of which must be proven by the  
2 prosecution beyond a reasonable doubt.

3 The four elements are:

4 One, that Regina Smith had sexual contact  
5 with Alisha Perry by placing Alisha Perry's hand on  
6 Regina Smith's vagina;

7 Two, that Regina Smith did so knowingly;

8 Three, at the time of the incident, Alisha  
9 Perry was less than 14 years old; and

10 Four, at the time of the incident, Alisha  
11 Perry was not married to Regina Smith.

12 In Count 5, Regina Smith is charged with the  
13 offense of Sexual Assault in the Third Degree.

14 A person commits the offense of Sexual  
15 Assault in the Third Degree if she knowingly has  
16 sexual contact with another person who is less than 14  
17 years old and not her spouse.

18 There are four material elements to this  
19 offense, each of which must be proven by the  
20 prosecution beyond a reasonable doubt.

21 The four elements are:

22 One, that Regina Smith had sexual contact  
23 with Alisha Perry by placing Regina Smith's hand on  
24 Alisha Perry's breast;

25 Two, that Regina Smith did so knowingly;

1           Three, at the time of the incident, Alisha  
2           Perry was less than 14 years old; and

3           Four, at the time of the incident, Alisha  
4           Perry was not married to Regina Smith.

5           In Count 13, Defendant Regina Smith is  
6           charged with the offense of Sexual Assault in the  
7           First Degree.

8           A person commits the offense of Sexual  
9           Assault in the First Degree if she knowingly subjects  
10          to sexual penetration another person who is less than  
11          14 years old.

12          There are three material elements to this  
13          offense, each of which must be proven by the  
14          prosecution beyond a reasonable doubt.

15          The three elements are:

16                 One, that Regina Smith subjected Jana Perry  
17                 to sexual penetration by placing Regina Smith's mouth  
18                 on Jana Perry's vagina;

19                 Two, that Regina Smith did so knowingly; and

20                 Three, at the time of the incident, Jana  
21                 Perry was less than 14 years old.

22          In Count 14, Defendant Regina Smith is  
23          charged with the offense of Sexual Assault in the  
24          First Degree.

25          A person commits the offense of Sexual

1 Assault in the First Degree if she knowingly subjects  
2 to sexual penetration another person who is less than  
3 14 years old.

4 There are three material elements to this  
5 offense, each of which must be proven by the  
6 prosecution beyond a reasonable doubt.

7 The three elements are:

8 One, that Regina Smith subjected Jana Perry  
9 to sexual penetration by placing Jana Perry's mouth on  
10 Regina Smith's vagina;

11 Two, that Regina Smith did so knowingly; and

12 Three, at the time of the incident, Jana  
13 Perry was less than 14 years old.

14 In Count 15, Regina Smith is charged with  
15 the offense of Sexual Assault in the Third Degree.

16 A person commits the offense of Sexual  
17 Assault in the Third Degree if she knowingly has  
18 sexual contact with another person who is less than 14  
19 years old and not her spouse.

20 There are four material elements to this  
21 offense, each of which must be proven by the  
22 prosecution beyond a reasonable doubt.

23 The four elements are:

24 One, that Regina Smith had sexual contact  
25 with Jana Perry by placing Jana Perry's hand on Regina

1 Smith's vagina;

2 Two, that Regina Smith did so knowingly;

3 Three, at the time of the incident, Jana  
4 Perry was less than 14 years old; and

5 Four, at the time of the incident, Jana  
6 Perry was not married to Regina Smith.

7 In Count 16, Regina Smith is charged with  
8 the offense of Sexual Assault in the Third Degree.

9 A person commits the offense of Sexual  
10 Assault in the Third Degree if she knowingly has  
11 sexual contact with another person who is less than 14  
12 years old and not her spouse.

13 There are four material elements to this  
14 offense, each of which must be proven by the  
15 prosecution beyond a reasonable doubt.

16 The four elements are:

17 One, that Regina Smith had sexual contact  
18 with Jana Perry by placing Regina Smith's hand on Jana  
19 Perry's vagina;

20 Two, that Regina Smith did so knowingly;

21 Three, at the time of the incident, Jana  
22 Perry was less than 14 years old; and

23 Four, at the time of the incident, Jana  
24 Perry was not married to Regina Smith.

25 In Count 17, Regina Smith is charged with



1 the offense of Sexual Assault in the Third Degree.

2 A person commits the offense of Sexual  
3 Assault in the Third Degree if she knowingly has  
4 sexual contact with another person who is less than 14  
5 years old and not her spouse.

6 There are four material elements to this  
7 offense, each of which must be proven by the  
8 prosecution beyond a reasonable doubt.

9 The four elements are:

10 One, that Regina Smith had sexual contact  
11 with Jana Perry by placing Regina Smith's hand on Jana  
12 Perry's breast;

13 Two, that Regina Smith did so knowingly;

14 Three, at the time of the incident, Jana  
15 Perry was less than 14 years old; and

16 Four, at the time of the incident, Jana  
17 Perry was not married to Regina Smith.

18 Quote, sexual penetration, unquote, means  
19 vaginal intercourse, anal intercourse, fellatio,  
20 cunnilingus, analingus, deviate sexual intercourse, or  
21 any intrusion of any part of a person's body or of any  
22 object into the genital or anal opening of another  
23 person's body; it occurs upon any penetration, however  
24 slight, but emission is not required. Each act of  
25 sexual penetration shall constitute a separate

1 offense.

2 Quote, sexual contact, unquote, means any  
3 touching of the sexual or other intimate parts of a  
4 person not married to the actor, or of the sexual or  
5 other intimate parts of the actor by the person,  
6 whether directly or through the clothing or other  
7 material intended to cover the sexual or other --  
8 excuse me, or other intimate parts.

9 Quote, cunnilingus, unquote, means the act,  
10 practice, or technique of orally stimulating the  
11 female genitalia.

12 Cunnilingus also includes the stimulation of  
13 the vulva, or clitoris, with the lips or tongue.

14 You must not discuss or consider the subject  
15 of penalty or punishment in your deliberations of this  
16 case.

17 A verdict must represent the considered  
18 judgment of each juror, and in order to return a  
19 verdict, it is necessary that all 12 jurors agree to  
20 it. In other words, your verdict must be unanimous.

21 Each of you must decide the case for  
22 yourself, but it is your duty to talk to one another  
23 and to deliberate with a purpose of reaching an  
24 agreement, if you can do so without violating your  
25 individual judgment. During your deliberations, do

1 not hesitate to re-examine your own views and change  
2 your opinion if convinced it is wrong. But do not  
3 give up your honest belief as to the weight or effect  
4 of evidence for the mere purpose of returning a  
5 verdict.

6 Upon retiring to the jury room, elect one of  
7 your members as foreperson to preside over your  
8 deliberations and be your spokesperson in court. You  
9 may take as much time as you feel is necessary for  
10 your deliberations. You may inform the Court if you  
11 have any questions or do not understand the Court's  
12 instructions.

13 When you reach a verdict, the foreperson  
14 must sign and date the appropriate verdict form.

15 Until you are through with your  
16 consideration of this case, it is necessary from this  
17 time that you remain together as a group. A bailiff  
18 and two clerks will be sworn to attend you.

19 Counsel, I've added "two clerks" because of  
20 our staffing situation.

21 A bailiff and two clerks will be sworn to  
22 attend you and help with problems you may have. If  
23 you need to communicate with the Court, send a note  
24 through the bailiff. Please do not attempt to  
25 communicate with the Court except in writing.

1 All of the evidence that you may consider in  
2 deciding this case has been presented to you during  
3 the trial. At all times, including your breaks from  
4 deliberations and when you are released to go home in  
5 the late afternoon, you must not attempt to gather any  
6 other information on your own which you think might be  
7 helpful. Do not engage in any outside reading on any  
8 matter having anything to do with this case. Do not  
9 refer to dictionaries or other outside sources. Do  
10 not visit any places mentioned in this case. Do not  
11 in any other way try to learn about the case outside  
12 the courtroom.

13 You must not discuss this case with anyone  
14 or permit anyone to discuss this case with you. You  
15 must not read or listen to news accounts about this  
16 case, if there are any.

17 You must not discuss this case with any  
18 person other than members of the jury. You must not  
19 reveal to the Court or to any other person how the  
20 jury stands, numerically or otherwise, until you have  
21 reached a unanimous verdict and it has been received  
22 by the Court.

23 As to each count, you may bring in either  
24 one of the following verdicts:

25 One, not guilty; or

1 Two, guilty as charged.

2 Your verdict must be unanimous.

3 After a verdict has been reached and your  
4 foreperson has signed and dated the verdict forms, you  
5 will notify the bailiff and court will be reconvened  
6 to receive the verdict.

7 May I have counsel at the bench with the  
8 reporter, please.

9 (The following proceedings were held at the bench:)

10 THE COURT: With respect to the reading  
11 of the instructions, are there any objections?

12 MR. MINKIN: None.

13 THE COURT: Mr. Parker?

14 MR. PARKER: None.

15 THE COURT: Mr. Tonaki?

16 MR. TONAKI: No objections.

17 THE COURT: Thank you. Thank you.

18 (End of bench conference.)

19 THE COURT: As further background for  
20 the members of the jury, you may have heard stories  
21 about jury deliberations going into the late evening  
22 or being sequestered. These things generally do not  
23 happen.

24 If you are unable to reach a verdict, you  
25 will be excused at 4 o'clock, as the preference of the

1 staff because of the need to transport our court  
2 reporter and other staff back to the Circuit  
3 Courthouse. In which case, if you are unable to reach  
4 a verdict by 4 o'clock each day, you will then be  
5 directed to return at 8:30 the following day to  
6 continue your deliberations.

7 While the Court does not discourage the use  
8 of the written communication forms, please be aware  
9 that due to mandatory procedures, it generally takes  
10 up to 45 minutes or more to respond to you. Even  
11 though we are in the age of technological advances, it  
12 is simply not physically possible for the Court to be  
13 able to confer with counsel and return a response to  
14 you in very short order.

15 Please also be aware that the Court cannot  
16 provide you, as I mentioned, with a transcript of the  
17 testimony that was given during the trial.

18 To assist you in performing your duties,  
19 Miss Fontanilla will be providing you with the items  
20 I've gone over; the verdict forms, the exhibits, a  
21 copy of the instructions you've just received, and any  
22 other supplies that you may require, such as paper,  
23 pen, tape or note paper.

24 At this time, with respect to our diligent  
25 alternates, and that would be Miss Rapoza, Mr.

1     Strezepek and also Mr. Guzman, I wish to let you know  
2     that we appreciate the time and effort you have  
3     devoted to the case. But now that we do have the full  
4     panel, it would be my duty to excuse you from further  
5     service with the thanks of the Court.

6 I'd like to have you wait a few minutes,  
7 please, because Ms. Fontanilla will need to process  
8 you out.

9 And also, Madam Bailiff, I would like to see  
10 the three alternates in chambers to thank them.

11                   And further, if Mr. Strezepek, Mr. Guzman  
12           and Miss Rapoza could excuse themselves from the box  
13           to sit next to the bailiff.  Actually, Miss  
14           Fontanilla, perhaps they can wait in chambers and I'll  
15           be there shortly.

16 (Alternate jurors excused)

17 THE COURT: Thank you.

18                   And at this time, could I have Miss Adeline  
19       Fontanilla raise her right hand, Miss Dawn Ching and  
20       Miss Edith Kubo for the oath.

21 (The bailiff and two clerks were sworn to  
22 take charge of the jury during deliberations.)

23 THE COURT: At this time a bailiff has  
24 been sworn to attend you. Miss Fontanilla will be  
25 directing your further schedule and activities.

1           At this time the members of the jury are  
2           excused to the deliberation room.

3           (At 11:39 a.m. the jury retired to commence  
4           its deliberations.)

5           THE COURT: The record will indicate  
6           that the jury has been excused from the courtroom.

7           Counsel, may I direct your further attention  
8           to the procedure, again, that we will be utilizing on  
9           any jury communications. That the Court will attempt  
10          to propose a mutual response. If there is an  
11          agreement, then a minute order will enter after we've  
12          made contact with you. If there is no agreement, I  
13          would ask counsel that you refer to item 13(a) and (b)  
14          on the jury trial guidelines. Each of you now have a  
15          copy?

16                 MR. PARKER: Yes.

17                 MR. MINKIN: Yes.

18                 THE COURT: Mr. Minkin?

19                 MR. MINKIN: Yes, Your Honor.

20                 THE COURT: And Mr. Tonaki?

21                 MR. TONAKI: Yes.

22                 THE COURT: Any questions?

23                 MR. PARKER: No.

24                 THE COURT: All right. Thank you. We  
25          stand in recess.



1                   If counsel, again, will furnish their phone  
2 numbers to the court clerk. Thank you.

3                   (Whereupon, the proceedings recessed at  
4 11:40 a.m., September 27, 1993.)

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*Cynthia Tando*  
CYNTHIA TANDO, C.S.R. No. 288